

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SANDRA SANDERS

PLAINTIFF

VS.

CIVIL ACTION NO. 3:20-cv-00830-CWR-LGI

MISSISSIPPI DEPARTMENT OF
REHABILITATION SERVICES

DEFENDANT

DEFENDANT'S FIRST MOTION IN LIMINE

COMES NOW Defendant, Mississippi Department of Rehabilitation Services ("MDRC"), by and through counsel, submit its First Motion *in Limine* as follows.

1.

This lawsuit arises from the plaintiff's allegations of race discrimination under Title VII of the Civil Rights Act of 1964 by her employer, MDRS, when she was not promoted to the position of Director of Client Services.

2.

In its order denying the defendant's motion for summary judgment [Doc. 51], this Court looked to part of the defendant's legitimate non-discriminatory reason that the position of the Director of Client Services had not previously been nor required to have been posted for advertisement. *Id.* at p. 3. The plaintiff's argument that said reason was pre-textual was based upon the deposition testimony of Kenisha Black, a co-worker of the plaintiff's where she stated that the position was publicly advertised twice previously in 2013 and 2015. *Id.* at p. 4. MDRS argued that Black's statements were hearsay as she did not have personal knowledge of whether the position was

advertised or not. *Id.* The Court had to view the evidence presented in summary judgment in the light most favorable to the nonmovant and credited Black's testimony that open positions were "posted on MSPB, the Mississippi State Personnel Board" website, and "any staff member can receive a link to any posting that is listed statewide" to support her having personal knowledge. *Id.*

3.

The trial of this case is set for the two-week term beginning October 3, 2022. Defendant moves to exclude the Kenisha Black's testimony regarding the advertisement of the Director of Client Services position at trial as hearsay not subject to an exception under Fed. R. Evid. 803. Black's statements were not based on personal knowledge and have since been proven false.

In response to subpoena by MDRS [Doc. 52-1], Kelly Hardwick with the Mississippi State Personnel Board stated that the position was a non-state service position that did not require competitive posting, and, after a records search, the Board had no records in the last ten years where the job had been posted through the Board. Exhibit A. Because the mere offer of Black's statements regarding the advertisement of the Director of Client Services position will tend to prejudice the jury to the detriment of the defendant, the Court should exclude such evidence prior to trial.

Due to the straightforward nature of this motion, the Defendants request that the requirement for supporting memorandum from L. R. Civ. R. 7(b).

WHEREFORE, PREMISES CONSIDERED, The Defendants respectfully request that this Court enter an order:

- Instructing the plaintiff, her counsel, and any and all witness called at the trial of this action to refrain from mentioning, attempting to introduce into evidence, or making any reference whatsoever to the matters specified above during the trial, whether in voir dire, opening statements, plaintiff's case in chief, or closing arguments; and
- Instructing plaintiff's counsel to inform the plaintiff and all her witnesses of the Court's order and to caution them not to make any reference to the matters specified above.

Defendants further request any such other relief as the Court might deem appropriate under the circumstances.

DATE: August 12, 2022

**MISSISSIPPI DEPARTMENT OF
REHABILITATION SERVICES,
*Defendant***

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system:

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This, the 12th day of August 2022.

/s/ Morgan A. Middleton